

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALI MUGALLI HASSAN,

Defendant.

Case No. 18-cr-00219-PJH-1

**ORDER DENYING MOTION TO
APPOINT COUNSEL, SETTING
BRIEFING ON § 2255 PETITION**

Re: Dkt. No. 298, 301

United States District Court
Northern District of California

Defendant Ali Mugalli Hassan has filed a request for appointment of counsel to file a motion under 28 U.S.C. § 2255. The Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes appointment of counsel to represent a prisoner seeking habeas relief under § 2255 whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." Generally, the decision to appoint counsel is within the district court's discretion. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). The purpose of section 3006A is to provide appointed counsel whenever the failure to do so would amount to a denial of due process. Id. Accordingly, in determining whether to appoint counsel, the district court should weigh the ability of a pro se petitioner to present forcefully and coherently his contentions based on a good understanding of the issues. See LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987). Where an evidentiary hearing must be held, however, appointment of counsel is mandatory. See Chaney, 801 F.2d at 1196; see also Rule 8(c) of the Rules on Motion Attacking Sentence Under Section 2255.

In view of the court's familiarity with defendant's case, having reviewed evidence brought in this case, having presided over the trial, and having considered a number of

1 post-trial requests filed by defendant pro se, the court does not find that defendant is
2 unable to articulate his claims pro se in light of the complexity of the legal issues
3 involved. See Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Therefore, the court
4 determines that the interests of justice do not require appointment of counsel at this time,
5 and defendant's motion to appoint counsel (Dkt. 298) is DENIED.

6 Defendant has also filed a pro se petition under 28 U.S.C. § 2255 to vacate, set
7 aside, or correct his sentence. See Dkt. 301.

8 Under 28 U.S.C. § 2255, a federal prisoner may file a motion to vacate, set aside,
9 or correct a sentence on the grounds that "the sentence was imposed in violation of the
10 Constitution or laws of the United States, or that the court was without jurisdiction to
11 impose such sentence, or that the sentence was in excess of the maximum authorized by
12 law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a).

13 The court conducts a preliminary review of this motion to determine whether it
14 presents a cognizable claim for relief and requires a response by the government. A
15 district court must summarily dismiss a § 2255 motion "[i]f it plainly appears from the
16 motion, any attached exhibits, and the record of prior proceedings that the moving party
17 is not entitled to relief." Rule 4(b), Rules Governing Section 2255 Proceedings for the
18 United States District Courts.

19 Defendant is currently serving a 37-month sentence that was imposed after a jury
20 trial in which he was found guilty of conspiracy to commit benefits fraud and to defraud
21 the United States, benefits fraud of \$5,000 or more, conspiracy to commit wire fraud, and
22 wire fraud. See Dkt. 230.

23 Defendant's current motion raises six grounds for relief.

24 First, defendant argues that he received ineffective assistance of counsel. See
25 Dkt. 301 at 1-2.

26 Second, defendant argues that he was denied the right to an impartial jury under
27 the Sixth Amendment. See Dkt. 301 at 2.

28 Third, defendant argues that the prosecution violated Brady v. Maryland by

1 intentionally withholding or altering evidence that was material to the defense. See Dkt.
2 301 at 2.

3 Fourth, defendant argues that the prosecution “relied on speculative and
4 circumstantial evidence to secure a conviction.” See Dkt. 301 at 2.

5 Fifth, defendant argues that the prosecution engaged in misconduct. See Dkt. 301
6 at 2.

7 Sixth, defendant argues that the cumulative effect of the above-alleged violations,
8 combined with judicial errors, deprived him of a fair trial as guaranteed under the Sixth
9 Amendment. See Dkt. 301 at 2.

10 Based on the court’s preliminary review, defendant’s motion warrants a response
11 from the government. Accordingly, the court orders the government to show cause why
12 the requested relief should not be granted. The government shall file with the court and
13 serve on defendant, within 49 days of the date of this order, an answer conforming in all
14 respects to Rule 5 of the Rules Governing Section 2255 Proceedings, showing cause
15 why the court should not “vacate, set aside, or correct the sentence” on defendant’s
16 claims. If defendant wishes to reply to the government’s response, he shall do so by
17 filing a reply with the court within 35 days of the date the response is filed.

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19 **IT IS SO ORDERED.**

20 Dated: January 3, 2025

21 /s/ Phyllis J. Hamilton
22 PHYLLIS J. HAMILTON
23 United States District Judge
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